

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Nondiscrimination in the Distribution of	)	CS Docket No. 01-7
Interactive Television Services Over Cable	)	

**ORDER  
(PROCEEDING TERMINATED)**

**Adopted: September 17, 2008**

**Released: September 23, 2008**

By the Commission:

1. In 2001, the Commission issued a *Notice of Inquiry* (“*ITV NOI*”)<sup>1</sup> seeking information on issues relating to “interactive television” or ITV services (“ITV”). The main questions raised in the *ITV NOI* included: (1) which entities are providing ITV services; (2) how will ITV services be delivered; (3) what business models will govern the delivery of ITV services to consumers; and (4) what is the general status of the ITV services market.<sup>2</sup> The *ITV NOI* sought comment on the legal classification of ITV services, what public policy and statutory objectives any potential ITV rules might address, and the Commission's authority to act in this area.<sup>3</sup> Although the proceeding was commenced as a result of issues raised in the America Online (“AOL”) and Time Warner merger proceeding,<sup>4</sup> the *ITV NOI* also sought information on the availability of ITV services by other competing video distribution systems.

2. Based on the record in this proceeding and on market developments that have taken place following the issuance of the *ITV NOI*, we now conclude that it is appropriate to terminate this docket. The triggering event for this proceeding was the merger of AOL and Time Warner and the recently launched AOLTV service, which was designed to provide interactive content in conjunction with video programming through a proprietary set-top box.<sup>5</sup> In the intervening period, however, the AOLTV service has been discontinued, due to what has been described as a “dismal consumer response,” as have certain other existing or proposed services of this type from other entities.<sup>6</sup> A considerable variety of other types of interactive service offerings continue to be pursued both in the United States and in other countries, but

<sup>1</sup> *Nondiscrimination in the Distribution of Interactive Television Services Over Cable*, 16 FCC Rcd 1321 (2001). Proceedings on a notice of inquiry are governed by Section 1.430 of the Commission's rules. 47 C.F.R. § 1.430.

<sup>2</sup> *Id.*, 16 FCC Rcd at 1322-23.

<sup>3</sup> *Id.*

<sup>4</sup> See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorization by Time Warner, Inc. and America Online, Inc. to AOL Time Warner, Inc.*, 16 FCC Rcd 6547 (2001) (“*AOL Time Warner Order*”).

<sup>5</sup> *AOL Time Warner Order*, 16 FCC Rcd at 6636.

<sup>6</sup> See *AOL Drops Interactive TV Product*, MEDIAWEEK, February 19, 2003 (“After a dismal consumer response, America Online has stopped selling its interactive television product, AOLTV.”). Microsoft has cut back on its interactive television offerings. See Rebecca Buckman, *Microsoft Corp. Disbands Division Making UltimateTV*, WALL STREET JOURNAL, January 25, 2002 at B2 (“Microsoft Corp., in another sign of its struggles in the interactive television business, has disbanded the unit that makes its UltimateTV set top box . . .”). See also Brian Morrissey, *Microsoft Offers Discounted MSN TV*, Internetnews.com, June 4, 2002 (discussing the lack of consumer interest in MSN TV and other services offering interactive capabilities over television).

without any uniformity as to technical standards or business models. Under the circumstances, and in light of the absence of any clear direction or consensus as to how this market may develop, it would be inappropriate to commence further regulatory action at this time.

3. We will, however, continue to monitor the development of ITV services and, in the event that future market conditions warrant intervention, we will respond accordingly. Parties may raise with the Commission any problems associated with specific implementations of interactive television services. Moreover, this action is without prejudice to our resolution of matters that may relate to ITV services in other pending proceedings, including those in CS Docket 98-120 (mandatory cable carriage of the signals of digital broadcast station signals),<sup>7</sup> CS Docket 97-80 (commercial availability of navigation devices and the compatibility between cable systems and consumer electronics equipment),<sup>8</sup> CS Docket 02-50 and GEN Docket 00-185 (broadband access to the Internet over cable and other facilities),<sup>9</sup> and WC Docket 04-36 (IP-enabled services).<sup>10</sup>

4. Accordingly, **IT IS ORDERED** that CS Docket No. 01-7 **IS TERMINATED**.

5. This action is taken pursuant to Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>7</sup> *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598 (2001).

<sup>8</sup> *Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998); *Compatibility Between Cable Systems and Consumer Electronics Equipment*, 15 FCC Rcd 17568 (2000).

<sup>9</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798 (2002).

<sup>10</sup> *In the Matter of IP-Enabled Services*, 19 FCC Rcd 4863 (2004). The Petition of SBC for declaratory ruling asking the Commission to find that "IP platform services," including video services, are subject to the Commission's Title I jurisdiction, but are exempt from other titles of the Communications Act, including Title VI has been incorporated in the IP-Enabled Services proceeding. See *Petition of SBC Communications Inc. for a Declaratory Ruling*, WC Docket No. 04-36 (filed Feb. 5, 2004).